IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SPECIAL JURISDICTION ORIGINAL SIDE

CHARTERED ACCOUNTANT REFERENCE NO. 1 OF 1996

In the matter of the Council of the
Institute of Chartered Accountants
of India, Indraprastha Marg,
New Delhi .. Petitioner

vs.

Shri B. K. Kurhade, ACA,
M/s. Balkrishna Kurhade & Co.,
Chartered Accountants
Flat No.1, Shri Bhagwati Co-op.
Housing Society, Nashik Road-422 101. Respondent

Dr. Virendra Tulzapurkar, senior counsel with Ms. S.Srikrishna i/b. M/s.Kanga & Co. for the petitioner-applicant.

CORAM : R.M. LODHA &
J. P. DEVADHAR,JJ.

Date : 9th August 2004

ORAL JUDGMENT (PER R.M. LODHA,J.)

The respondent-B.K. Kurhade is the member of the Institute of Chartered Accountants of India. The Director of Industries, (hereinafter referred to as "the complainant") filed the complaint against Shri B.K.

Kurhade (for short, “the respondent”) before the Institute of Chartered Accountants of India alleging the professional misconduct committed by the respondent. The allegation against the respondent was that he had certified information of past consumption, production etc. in respect of import applications for the licensing year 1987-88 of 12 SSI units located in Ahmednagar District; these certificates by the respondent were found incorrect as some of these units were found either not working regularly or had not maintained required consumption or did not require or could not use the raw material applied for in their actual manufacturing process. The copy of the said complaint was sent to the respondent by the Institute's letter dated 2nd March 1989. The respondent responded by filing written statement on 10th April 1989. The prima facie case of professional misconduct against the respondent was found by the Council and for inquiry matter was referred to the disciplinary committee. The disciplinary committee, after hearing the parties and recording the evidence that was tendered before it submitted the report to the Council holding the respondent guilty of professional misconduct within the meaning of section 21 read with section 22 of the Chartered Accountants Act, 1949 and clauses (7) and (8) of Part I of the Second Schedule of the said Act. The Council forwarded the copy of the report to the complainant as well as the respondent. They were also asked to

appear in person and/or through a member of the Institute before the Council. Neither the complainant nor the respondent appeared before the Council, though they submitted their written representations before the Council The Council concurred with the finding of the disciplinary committee that the respondent was guilty of professional misconduct and recommended to this Court that the name of the respondent be removed from the Register of Members for a period of two years. This is how the reference under Section 21(5) of the Chartered Accountants Act, 1949 is before us.

2. We heard Dr. Virendra Tulzapurkar, the learned senior counsel for the Institute of Chartered Accountants of India and perused the available material. The respondent has not chosen to appear before us despite service.

3. Even from the written statement filed by the respondent before the disciplinary committee, there appears to be no serious challenge that the certificates issued by the respondent certifying the consumption figures of the 12 small scale units were not correct. The respondent in his examination before the disciplinary committee though stated that he verified the purchase and sales registers, but he could not explain on what the consumption figures were arrived at. Rather, he conceded that he did not verify these

figures personally. The explanation of the respondent was that he being a physically handicapped person suffering from polio and at that time had also sustained fracture in his right leg , he could not personally visit the units and he relied upon his assistants. He submitted that he was misled by his assistants, import advisor and the SSI unit owners but he did not do so for any monetary gain. He submitted before the disciplinary committee that he was prepared to accept any punishment that may be meted out to him and pleaded for a merciful and lenient view.

4. It is, thus, clear that the respondent issued the certificates of consumption by the 12 SSI units without proper verification. The due care and caution expected of the respondent before issuance of the said certificates was wanting. The fact that the certificates issued by the respondent in respect of 12 small scale industries units were incorrect is amply established. The respondent did not discharge his professional duties responsibly in issuance of consumption certificates and as a result thereof, those SSI units could get the import licences. It is not in dispute that the Joint Chief Controller of Imports and Exports had imposed a penalty of Rs.2,000/- on the respondent under Imports and Exports Control Act, 1947 and Imports Control Order, 1955. In this view of the matter the finding of

the disciplinary committee that the respondent was guilty of professional misconduct and the acceptance of the said finding by the Council cannot be faulted.

5. Having concurred with the finding of the disciplinary committee that the respondent was guilty of professional misconduct, the Council recommended to this Court that the name of respondent be removed from the Register of Members of the Institute for two years. In the facts of the case and particularly the frank and honest admission by the respondent of his professional guilt and also his candid submission that he was prepared to accept punishment that may be meted out to him, we are of the considered view that removal of the name of respondent from the Register of Members for a period of two years is too harsh and needs to be modified.

6. The respondent is a physically disabled person suffering from polio. Nothing has been found by the disciplinary committee that the respondent conspired or colluded with the concerned Small Scale Industries in issuance of the said certificates. A penalty of Rs.2,000/- has already been imposed upon him by the Joint Chief Controller of Imports and Exports under the Imports and Exports Control Act, 1947 and Imports Control Order, 1955.

We also find that the Joint Chief Controller of Imports and Exports in his order dated 17th October 1990 imposing a penalty upon the respondent ordered that the certificates issued by the respondent shall not be accepted by the Controller of Imports and Exports for a period of five years from 1991 to 1995. For his acts and omissions in issuing the consumption certificates which were not correct, the respondent has already suffered a punishment at the hands of the Joint Chief Controller of Imports and Exports. As regards the professional misconduct that has been established against the respondent, we are of the considered view that interest of justice shall be subserved if the punishment recommended by the Council is reduced by removal of the respondent's name from the register of members for a period of three months. This punishment would be deterrent enough and eye opener for the respondent for being careful in future.

7. We, accordingly, pass the following order:

(i) The finding recorded by the disciplinary committee and concurred by the Council that the respondent is guilty of professional misconduct is accepted.

(ii) The punishment recommended by the Council is modified and we

order that the name of respondent shall be removed from the Register of Members for a period of three months.

(R. M. LODHA, J.)

(J. P. DEVADHAR,J.)